IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 119 of 2005

For Approval and Signature:

THE HON'BLE MR.JUSTICE A.M.KAPADIA

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 of any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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USHABEN CHANDRAVADAN CHOKSI &4 - Petitioner(s)

Versus

GOPALDAS BHOJWANI DIRECTOR OF P K PLASTIC PVT LTD &8 - Respondent(s)

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Appearance :

MR MEHUL S SHAH for Petitioner No(s).: 1 - 1.MR SURESH M SHAH for Petitioner No(s).: 1 - 1.
MR DC DAVE for Respondent No(s).: 1,7,8.
Mr. Rakesh Patel for Respondent No(s).: 2, 3,4,5,6.

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CORAM :THE HON'BLE MR.JUSTICE A.M.KAPADIA

Date : 28/06/2005

ORAL JUDGMENT

1. Rule. Mr. DC Dave, learned advocate appears and waives service of notice of rule on behalf of respondent Nos.1, 7 and 8 whereas Mr. Rakesh Patel, learned advocate appears and waives service of notice of rule on behalf of rest of the respondents.

2. By filing this petition under Section 115 of the Code of Civil procedure the petitioners seek to challenge the order dated 20.5.2005 recorded below Ex.1 and 20 of Lodging No.928 of 2005 by the learned Chamber Judge, Court No.11, City Civil Court, Ahmedabad by which the petitioners are directed to put the correct valuation of the plaint and affixed the court fees of Rs.74,350/- as deficit court fees.

3. Having heard Mr. Suresh M Shah, learned advocate for the petitioners and Mr. DC Dave, learned advocate for respondent Nos.2, 7 and 8 and Mr. Rakesh Patel, learned advocate for the rest of the respondents and having perused the impugned order, it appears that the learned Chamber Judge has passed the impugned order without following the provisions of sub-section (3) of Section 5 of the Bombay Court Fees Act, 1959 ('the Act' for short) which reads as under:

"*(3) When any such difference arises in the Ahmedabad City Civil Court, Ahmedabad, the question shall be referred to the registrar of the City Civil Court whose decision shall be final, subject to revision, on an application, made within sixty days from the date of the decision, by the party concerned or such officer as may be appointed in this behalf by the State Government, by the Principal Judge or such other Judge of the said Court as the Principal Judge shall appoint either generally or specially in this behalf.*"

4. In instant case, the difference arose with regard to payment of court fees and therefore by virtue of sub-section (3) of section 5 of the Act, the question shall be referred to the Registrar of the City Civil Court whose decision shall be final, subject to revision, on an application, made within 60 days from the date of the decision, by the party concerned or such officer as may be appointed in this behalf by the State Government in this regard. Instead of deciding the difference with regard to the court fees by the Registrar of the City Civil Court, the learned Chamber Judge himself has taken up the issue and decided the matter which is contrary to the statutory provisions contained under sub-section (3) of Section 5 of the Act. In aforesaid view of the matter, the impugned order deserves to be quashed and set aside by allowing

this revision application.

1. For the foregoing reasons, the petition succeeds and accordingly it is allowed with no order as to costs. The order dated 22.5.2005 recorded below Ex.1 and 20 of Lodging No.928 of 2005 by the learned Chamber Judge, Court No.11, City Civil Court, Ahmedabad is hereby quashed and set aside. The matter shall be placed before the Registrar of the City Civil Court, Ahmedabad for deciding the issue with regard to the court fees. Rule is made absolute to the aforesaid extent.

6. Needless to clarify that at present no interim relief is operating in favour of either party.

(A.M. Kapadia, J.)

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